IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Criminal Appeal No.238 of 1998

Rajan .. Appellant

-Vs-

State, rep. by
Inspector of Police
Eral Police Station .. Respondent

PRAYER: Against the conviction and sentence imposed by the learned Principal Sessions Judge, Tuticorin in S.C.No.1 of 1995 dated 27.1.1998 .

For Appellant : Mr.G.R.Edmund

For Respondent : Mr.A.Navaneethakrishnan
Addl. Public Prosecutor

:JUDGMENT

P.D.DINAKARAN,J.

The appellant herein along with his father second accused were tried as first accused and second accused respectively in S.C.No.1 of 1995 by the learned Principal Sessions Judge, Tuticorin for the offence punishable under Section 302 I.P.C. committed by the first accused and for the offences punishable under Sections 324 and 302 read with 34 I.P.C. committed by the second accused at about 1.30 pm on 31.10.1992 at Palayakayal Village within the jurisdiction of the Police Station at Eral, Tuticorin District. While the first accused was found guilty of the offence punishable under Section 302 I.P.C., convicted for the same and sentenced to undergo imprisonment for life, the second accused was found not guilty of the charges framed against him and therefore, acquitted, by judgment dated 27.1.1998 made in S.C.No.1 of 19 95 by the learned Principal Sessions Judge, Tuticorin, aggrieved by which, the first accused has preferred the above appeal.

2. For the sake of convenience the parties are described as per their rank in the Sessions Case.

3.1. The prosecution case is that: The first accused, who was already married, eloped with Antoniammal, who is the younger sister of deceased Mathiazhagan, and was living with her in a hut at Palayakayal Village, along with his first wife and sister by name Vijaya, which is very close to that of the deceased Mathiazhagan, who was living with his another sister Tamilarasi (P.W.1), his mother Innasiammal (P.W.3), elder brother Sekar (P.W.8) and his wife Pitchakani (P.W.2). These facts are not in dispute.

3.2. On 31.10.1992, at about 1.30 P.M., there was a quarrel between P.W.3 and Vijaya (sister of the first accused) at the street pipe, which is located near the house of the first accused. On hearing the quarrel, P.W.1 and her brother Mathiazhagan went near the street pipe. At that time, the first accused and the second accused came to the street pipe armed with pitchuva knife and aruval respectively. The second accused cut P.W.1 with an aruval, and as a result, P.W.1 got an injury on her right hand little finger. When Mathiazhagan came to the rescue of P.W.1, the first accused stabbed Mathiazhagan from his back with pitchuva knife. Mathiazhagan turned towards the first accused. In the meanwhile, the first accused again stabbed Mathiazhagan with the pitchuva knife on his left chest. Mathiazhagan tried to snatch the pitchuva knife from the first accused and the same was resisted by the first accused but got injured on his right thumb. Having snatched the pitchuva knife from the first accused, Mathiazhagan stabbed the first accused on his chest. At that time, the second accused tried to cut Mathiazhagan on his leg with the aruval but the cut got slipped, and fell on the leg of the first accused. After the scuffle, Mathiazhagan fell down unconsciously.

3.3. P.W.1 to P.W.3 took the injured Mathiazhagan to the road side and boarded the Kattabomman Transport Corporation bus to take him to the Government Hospital, Tuticorin. But, since the condition of Mathiazhagan became serious on the way, he was shown to a private medical practitioner, Dr.Dharmaraj (P.W.11), at Athimarapatti Vilakku, who declared Mathiazhagan dead.

3.4. The injured first accused and P.W.1 were also taken to the Government Hospital, Tuticorin in the same bus. Dr.Jayakumar (P.W.5) admitted and examined the first accused and issued the accident register marked as Ex.P5. P.W.1, who got injured during the scuffle between the first accused and Mathiazhagan, also got admitted and examined by Dr.Jayakumar (P.W.5), who issued the accident register marked as Ex.P4.

3.5. After Mathiazhagan was declared dead, P.W.1 and P.W.8 went to Eral Police Station, gave a statement marked as Ex.P1 signed by P.W.1 and attested by P.W.8.

3.6. Based on the statement marked as Ex.P1, P.W.10, the Sub Inspector of Police, Eral Police Station, registered the F.I.R., marked as Ex.P.16 in Crime No.707 of 1992 against the first accused for the offence punishable under Section 302 IPC and against the second accused for the offences punishable under Sections 324 and 302 read with 34 IPC.

3.7. On a requisition from the Inspector of Police, marked as Ex.P2, Dr.Ramasubramanian, Civil Assistant Surgeon, Government Hospital, Tuticorin (P.W.4) conducted post mortem on the body of the deceased Mathiazhagan, and issued the post mortem certificate marked as Ex.P3.

3.8. Based on the F.I.R. marked as Ex.P16, the Inspector of Police, Tuticorin Central Police Station, who was also in charge of the Eral Police Station at that time, viz., the investigating officer (P.W.15), visited the scene of occurrence at 1700 H on 31.10.1992 and prepared an observation mahazar marked as Ex.P10 from the place where the dead body was lying and also prepared a rough sketch of the scene of occurrence, marked as Ex.P23, in the presence of the Village Administrative Officer (P.W.7) and his Thalayari; and also recovered pitchuva knife (M.O.1), blood stained portion of tar road (M.O.3 series), sample tar road portion (M.O.4 series), one blood stained white towel (M.O.6), and one blood stained white dhothi (M.O.7) from the scene of occurrence.

3.9. On 1.11.1992, P.W.15 went to the Government Hospital, Tuticorin, examined the first accused and recorded his statement and on the same day, he also examined Dr.Dharmaraj (P.W.11), Pandaram, Village Administrative Officer (P.W.7) and his Thalaiyari.

3.10. In the meanwhile, since the regular Inspector of Police, Eral Police Station, viz., P.W.16 returned to duty, P.W.15 handed over the further investigation to P.W.16.

3.11. On 9.11.1992, on an application by P.W.16 during his further investigation into the case, the Judicial Magistrate, Srivaikuntam, remanded the first accused for fifteen days and also ordered for security to the first accused in the hospital.

3.12. On 10.11.1992, P.W.16 arrested the second accused at Palayakayal bus stop in the presence of the Village Administrative Officer, Koilraj (P.W.9) and his Thalaiyari. On a voluntary confession by the second accused, P.W.16 recovered a palaai aruval (M.O.2).

3.13. P.W.16 sent the case properties for chemical analysis, obtained the Chemical Examiner's report, marked as Ex.P8 and the Serologist' s report, marked as Ex.P9.

3.14. Based on the investigation, a final report was prepared on 5.6.1993 and the accused were tried by the learned Principal Sessions Judge, Tuticorin.

3.15. After the examination of the prosecution witnesses, accused 1 and 2 were questioned under Section 313, Cr.P.C. The first accused stated that it was only the deceased who came with a knife and stabbed the first accused, and during the course of scuffle by rolling, both the first accused and the deceased got injured. The second accused stated that he did not know anything about the occurrence, as he was at Sarvodaya Office at the time of the occurrence.

4. On appraisal of the evidences on record, the trial Court found the first accused guilty of the charge for the offence punishable under Section 302, I.P.C., but acquitted the second accused. Hence, the above appeal.

5.1. Mr.G.R.Edmund, learned counsel appearing for the first accused, took us through the evidence available on record as well as the judgment of the trial Judge and contends that:
a.the trial Court, having disbelieved the evidence of P.Ws.1, 2 and 3 , in view of the contradictions in their evidence and acquitted the second accused, ought to have applied the same yardstick while dealing with the charge framed against the first accused and held that the prosecution failed to establish the charge framed against the first accused beyond reasonable doubts, and acquitted the first accused as well;
b.the non-examination of independent witnesses, viz., Patturaj and Johnson, also renders the prosecution case unbelievable. The false implication of the second accused by P.Ws.1, 2 and 3, as found by the trial Court, renders their evidence doubtful;
c.the non-explanation of the injuries sustained by the first accused at or about the time of occurrence, throws a serious doubt on the evidence of P.Ws.1, 2 and 3, as the same are not trust-worthy;
d.the failure on the part of the prosecution to register the complaint lodged by the first accused and to investigate into the matter to find the real aggressor to the scuffle, is a serious lapse on the investigation made by the prosecution, which goes to the root of the issue to doubt the very genesis or origin of the occurrence, and therefore, vitiates the conviction; and
e.in any event, the prosecution ought to have accepted the plea of private defence made by the first accused in his statement made under Section 313 Cr.P.C.

5.2. Mr.G.R.Edmund, further contends that the occurrence, having taken place in a broad day light between 1.30 pm and 2.00 pm on 31.10.19 92 in the main road near the public tap by the side of the bunk shop belonging to Patturaj, where Patturaj and Johnson, were standing along with the other public, and these facts were expressly mentioned in the statement made by P.W.1, viz., Ex.P1, the non-examination of any of such outsiders as witnesses, particularly Patturaj and Johnson, from whom statements were said to have been obtained by the Investigating Officer, renders the prosecution case unbelievable, as the sole testimony of P.Ws.1, 2 and 3, who are interested witnesses, could not be relied upon for the safe conviction of the first accused.

5.3. To buttress this argument, Mr.G.R.Edmund brought to our notice that P.Ws.1, 2 and 3 are interested witnesses for two reasons, viz., (i) they are related to the deceased; and (ii) they are inimical to the accused, who had eloped with Antoniammal, who is nonetheless the sister of P.W.1, sister in law of P.W.2 and daughter of P.W.3.

6. In answer to the contentions made on behalf of the first accused/appellant, Mr.A.Navaneethakrishnan, learned Additional Public Prosecutor contends that:
(a)the trial Court rightly convicted the first accused based on the ocular

evidence of P.Ws.1, 2 and 3;
(b)the non-examination of any outsider would not be, in any way, fatal to the prosecution case, which is fully supported by the ocular evidence of P.Ws.1, 2 and 3. Merely because of the fact that P.Ws.1, 2 and 3 are closely related to the deceased and that there was a strained relationship between the family of the deceased and the accused, the evidence of the eye-witnesses would not lose its value and trustworthiness, as they corroborate with the other material evidence on record, such as the evidence of the mahazar witness - P.W.7, the medical evidence of P.W.4 read with Ex.P3 as well as the evidence of the Investigating Officers - P.W15 and P.W.16;
(c)even though P.Ws.1, 2 and 3 are closely related, the mere contradictions, inconsistencies, by themselves, would not, render their evidence unreliable;
(d)the non-registration of the complaint lodged by the first accused, would not, by itself, lead to the conclusion that the prosecution case must be discarded, as it is clear from the medical evidence that the injuries found on the accused are superficial, but not as grievous as the injuries caused by the accused on the deceased, which resulted in the death of the deceased. The failure to register the complaint by the Investigating Officer, therefore, shall not assume any significance to suggest any serious lapse in the investigation of the case; and
(e)in any event, the plea of private defence could not be based on surmise and speculation; nor the same could surpass the ocular evidence supported by the medical evidence, based on which, the first accused was held guilty of the offence punishable under Section 302 I.P.C.

7. We have given our careful consideration to the submissions of both sides in the light of the materials available on record.

8.1. The conviction of the first accused rests on the ocular evidence of P.Ws.1, 2 and 3. It is true, P.Ws.1, 2 and 3 are closely related to the deceased and there was strained and inimical relationship between the family members of the accused on the one hand and that of the deceased on the other. Therefore, the testimony of P.Ws.1, 2 and 3 , in our considered opinion, needs careful scrutiny.

8.2.1. According to P.W.1, it was the second accused who first attacked P.W.1 with an aruval, which caused an injury on her little finger. The medical evidence of P.W.5 read with Ex.P4 ensures the injury on the little finger of P.W.1.

8.2.2. P.W.1 deposed that when her brother (deceased Mathiazhagan) came to her rescue, the first accused stabbed the deceased firstly on his back, thereafter on his chest and in the meanwhile, the deceased attempted to snatch the knife from the first accused and during the process first accused sustained an injury on his thumb. But, there is no corresponding injury on the thumb of the first accused as per the medical evidence of P.W.5 read with Ex.P5, as the first accused had sustained only an injury on his chest, namely incised bleeding wound on his right chest 6th space transverse 2« x « c.m. muscle depth.

8.2.3. P.W.1 further deposed that the first accused snatched the

knife from her brother (deceased Mathiazhagan) and stabbed again on the chest of the deceased, and by then, the second accused attempted to cut the leg of the deceased with an aruval, but the same slipped and fell on the leg of the first accused. Again, there was no such corresponding injury on the leg of the first accused, as per the medical evidence of P.W.5 read with Ex.P5.

8.2.4. In the cross-examination, P.W.1 identified the knife (M.O.1), which was said to have been used for the commission of the offence. According to the recovery Mahazar witness P.W.7, M.O.1 was recovered by the Investigating Officer (P.W.15) from the place of occurrence in his presence under the recovery mahazar - Ex.P13 and the length of the said knife (M.O.1) was 10 inches, half of which contained blood stains. But, as per the report of the Chemical Examiner, Forensic Laboratory, marked as Ex.P8, there was no blood stain on the knife (M. O.1).

8.3.1. P.W.2 is the sister-in-law of the deceased who also deposed that it was second accused, who started the attack with an aruval on P.W.1, on account of which P.W.1 sustained an injury on her little finger. Even though P.W.2 also would state that when the second accused attacked the deceased on his leg, the same slipped and fell on the leg of the first accused, there is no such corresponding injury on the leg of the first accused as per the medical evidence of P.W.5 read with Ex.P5, as observed earlier.

8.3.2. Even though, in the cross-examination of P.W.2, she would state that the first accused snatched the knife from the hands of the deceased, there is no proper explanation from P.W.2 as to how the deceased came to be in possession of the knife. However, P.W.2 confirmed that the first accused attempted to snatch the knife from the hands of the deceased and both of them scuffled, which would prove that the deceased was in possession of the knife.

8.4.1. P.W.3, the mother of the deceased, also states that the second accused alone gave the first cut with his aruval on P.W.1, as a result of which, P.W.1 sustained an injury on the little finger.

8.4.2. P.W.3 admitted that Johnson accompanied P.Ws.1 to 3 while taking the deceased to the hospital, which corroborates with the evidence of P.W.15 that Patturaj and Johnson were eye-witnesses.

8.5. Accordingly, there were contradictions and inconsistencies pointed out by the defence as hereunder:

(i)the contradictions with reference to the presence of outsiders, for example, Patturaj and Johnson, who were not examined as independent witnesses, in spite of obtaining their statements, as the occurrence had taken place in the broad day light in a public place, viz., near the street pipe on the main road and witnessed by the public;
(ii)the contradictions with reference to the overt act said to have been committed by the first and second accused on the deceased as well as P.W.1;
(iii)the contradictions with reference to the false implication of the second accused in the alleged crime, which creates a serious doubt in the evidence of

the eye witnesses, namely, P.Ws.1, 2 and 3;
(iv)the inconsistency with reference to the injuries said to have been caused on the first accused, viz., on his right thumb and leg, as there was no such corresponding injury on the first accused as per the evidence of P.W.5 read with Ex.P5; and
(v)the contradictions with reference to the blood stained pitchuva knife - M.O.1 used for the commission of the crime was seized by P.W.15 in the presence of P.W.7, as no such blood stain was found on the said knife, as per the chemical examiner's report marked as Ex.P8.

8.6. Of course, it is a trait law that mere contradictions, inconsistencies, exaggerations and embellishments, much less the minute variations in narrating the incidents, by themselves would not militate the trust-worthiness of the narration made by them with respect to the incident, as some difference in the mode of narrating the incident is bound to arise when an incident is narrated to different persons on different occasions.

8.7. However, in our considered opinion, the exaggeration and embellishment in the evidence of P.Ws.1, 2 and 3 for having chosen to rope in the second accused, falsely implicating him in the crime, whose very presence in the scene of occurrence was rightly disbelieved by the trial Court, renders their evidence as abnormal.

8.8. From the above critical analysis, it is clear that P.W.1 is an injured witness. She is the elder sister of the deceased Mathiazhagan. The presence of injuries on P.W.1, as supported by the medical evidence namely P.W.5 read with Ex.P4 ensures her presence on the spot at the time of the occurrence. Hence, we are obliged to attach sanctity to the testimony of her witness. However, the false implication of the second accused, who is found to be an innocent person by the trial Court, which remains unchallenged, creates a serious doubt in the testimony of P.Ws.1, 2 and 3, even though the injured witness will never leave the real culprit.

8.9.1. Of course, the occurrence had taken place in broad day light, near the public tap on the main road, which is located near a bunk shop where outside public were very much present and statements were said to have been obtained by the Investigating Officer from some of them, viz., Johnson, who could be natural witness. Even though it is not clear as to why the prosecution failed to examine any of such outsiders as independent witnesses, we do not see any lapse on the part of the prosecution in that regard at all, as it is the choice of the prosecution to examine the witnesses who unfold the story of the prosecution.

8.9.2. The Apex Court in AMBIKA PRASAD Vs. STATE (DELHI ADMN.) reported in (2000) 2 SCC 646 while holding that non-examination of independent witnesses by itself cannot be a ground for rejecting the evidence of witnesses who were injured in the occurrence held as follows:
"Independent persons are reluctant to be witnesses or to assist the investigation. Reasons are not far to seek. Firstly, in cases where injured

witnesses or the close relative of the deceased are under constant threat and they dare not depose the truth before the court, independent witnesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance. Another reason may be the delay in recording the evidence of independent witnesses and repeated adjournments in the court. In any case, if independent persons are not willing to cooperate with the investigation, the prosecution cannot be blamed and it cannot be ground for rejecting the evidence of injured witnesses."

8.9.3. That apart, where the accused and deceased scuffled with each other with a deadly weapon, namely Pitchuva knife, certainly such action would deter the independent persons from the public to be a witness. Hence, in our considered opinion, the mere non-examination of such outsider as witnesses, namely Patturaj and Johnson, by itself, would not be fatal to the prosecution case.

8.10. One another aspect of the case of the prosecution, which deserves to be critically viewed by us is the failure to register the complaint lodged by the first accused, who concedingly sustained injuries and was admitted in the hospital by P.W.5 vide the accident register marked as Ex.P5 and was treated as an in-patient for a minimum period of ten days from the date of the occurrence, during which period, he was remanded by the learned Judicial Magistrate, Srivaikuntam in the hospital itself. No proper explanation was elucidated from the medical witness, viz., P.W.5 as to why the first accused was treated as an in-patient for a considerable minimum period of ten days, even though the injury found on his chest, as per Ex.P5, was opined by P.W.5 as simple in nature; nor the doctor - P.W.5 had opined that the injury found on the first accused, as certified in Ex.P5, was selfinflicted even though the prosecution is under a duty to explain the injuries on the accused persons.

8.11. The contradictions and inconsistencies referred to above, therefore, would require a closer scrutiny of the evidence of these witnesses who were natural witnesses and had full opportunity to watch the incident which took place in broad day light. It cannot also be forgotten that they would see to it that the real culprits do not escape. From the overall picture it can be safely accepted that they were present at the incident of violence between the accused and the deceased. Their evidence to a limited extent will have to be accepted. All the three witnesses, namely P.Ws.1, 2 and 3, consistently support the prosecution case unfolded in the F.I.R. with respect to the overt act by the first accused and the grave injuries caused on the deceased Mathiazhagan by using a deadly weapon, and their evidence corroborates with the medical evidence of P.W.4 read with Ex.P3. It is the duty of criminal Court to separate chaff from the grain. In this case the witnesses may have exaggerated the role of second accused but their evidence as against the first accused has not been shaken at all. We can safely hold that the first accused was the author of injuries on the deceased and thus caused his death.

8.12.1. It is well settled principle in law, vide UGAR AHIR & OTHERS Vs. THE STATE OF BIHAR reported in AIR 1965 SC 277 and NATHU SINGH YADAV Vs. STATE OF MADHYA PRADESH reported in JT 2002 (9) SC 591, that:
"The maxim falsus in uno, falsus in omnibus (false in one thing, false in

everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroiders or embellishments. It is therefore, the duty of the Court to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

8.12.2. By a closer appreciation of the evidence of P.Ws.1, 2 and 3, we are, therefore, obliged to accept the evidence of P.Ws.1, 2 and 3 to the extent that the first accused caused serious and grave injuries on the deceased Mathiazhagan. Therefore, neither the nonexamination of independent witnesses nor the non-explanation of the injuries on the accused persons does not necessarily lead to a conclusion that the entire prosecution case is false and must be thrown out.

8.13.1. Of course, the omission on the part of the prosecution to explain the injuries on the accused assumes greater importance where the evidence consists of interested and inimical witnesses or where the defence gives a version, which competes in probability with that of the prosecution one, as held by the Apex Court in LAKSHMI SINGH Vs. STATE OF BIHAR reported in AIR 1976 SC 2263.

8.13.2. It is under such circumstances, the statement of the first accused made under Section 313 Cr.P.C., describing the incriminating circumstance under which the fateful death of deceased Mathiazhagan had been caused, namely it was the deceased who came with a knife and stabbed the first accused, and during the course of scuffle by rolling, both the first accused and the deceased got injured, and his pleading private defence deserves our consideration. Of course, as usual, a complete plea of private defence is not raised by the first accused. The plea is halting. We would, therefore, have to consider whether the first accused was justified in causing injuries to the deceased. The learned defence counsel at this appellate stage, however, urged that the deceased was an aggressor and as such the benefit of the right of private defence could be granted to the accused and claimed an acquittal of that account.

8.14. The right of private defence to a person cannot be weighed in golden scales. The persons who are victims of aggression cannot be expected to judiciously weigh in golden scales the quantum of force which they are to use so long as the force used to combat aggression is not unduly excessive. So long as the force used to combat aggression is not unduly excessive, it would be a wrong judicial approach to hold that the right of private defence of a person has been exceeded. Mr.G.R.Edmund, therefore, contends that, at the spur of the moment, the accused, who resisted the attack of the deceased aggressor, could not have rationally and judiciously weighed the quantum of force ought to have been used by him for his private defence. We are unable to appreciate the same.

8.15. Assuming, the first accused, who pleads the right of private defence, need not prove it beyond reasonable doubt, even though the right of private

defence was not pleaded by the first accused in so many words in his statement under Section 313 Cr.P.C., it is enough to apply the test of preponderance of probability and therefore, the burden placed on the accused is discharged no

sooner he creates a doubt in the mind of the Court and satisfies the Court that the version disclosed by him in the facts and circumstances of the case is probable.

8.16. But, the right of self-defence pleaded by the first accused cannot be accepted as a matter of course in abstract, based on surmise or speculation, but the same has to be tested in the light of the evidence of P.Ws.1, 2 and 3 to the extent which corroborates with the evidence of P.W.5 read with Ex.P3, and therefore, we are obliged to compare the injuries found on the body of the deceased, as evident from Ex.P3, and the injury found of the first accused, as evident from Ex. P5.

8.17. In this connection, we are obliged to extract the relevant portion of Ex.P3, viz., the post mortem certificate, which reflects the injuries caused on the body of the deceased as well as Ex.P5, which contains the injury caused on the body of the first accused:

Ex.P3 - Post Mortem Certificate:
External Injuries:
1.Incised wound left 7th inter coastal space 5 cm away from mid sternum 2 cm x 1 cm x 1.5 cm size elliptical in shape and subcutaneous depth blood-stains.
2.An incised wound elliptical shape 3 x 2 x 1 cm subcutaneous depth (L) 10th intercoastal space 8 cm away from mid spinal level of bloodstains.
3.Abrasion 5 x 0.5 cm blood-stains on the posterior auxiliary line along (L) 8th intercoastal space.
4.Cut injury 1 x 0.1 x 0.2 cm superficial shape depth and bloodstains on lateral upper arm 10 cm below shoulder joint.
5.Lever abrasion 4 x 0.5 x 0.1 cm over left shoulder joint.
Internal examination:
Opening thorax: Hyoid intact
6.Linear fracture in left 6th and 7th ribs along the costocondrial junction and blood clots of 10ml over the corresponding intercoastal muscle. (Corresponding to wound 1 described above)
7.Incised penetrating wound 4 x 1.5 cm x 0.5 cm over the left hemidiaphragm. (Corresponding to wound 6 vide supra).
8.Punctured wound along the lever lobe of left lung measuring 4 cm x 1.5 cm x 0.5 cm (corresponding to wound 7 vide supra). Heart: Weight 300 grams cut section uniformly pale. Lung: Normal weight cut section pale. Abdomen: Peritoneal cavity filled with 2 litres of partially clotted blood. Liver: Normal weight.
9.Incised wound elliptical shape 8 cm x 0.5 cm x 1 cm in the upper part of left lobe of liver (corresponding to wounds vide supra).

Ex.P5: Accident Register:
1.Incised bleeding would right chest 6th space transverse 2« x « c.m. muscle depth.

8.18. A careful analysis of the ocular evidence of P.Ws.1, 2 and 3, weighed in the light of the medical evidence, referred to above, aids us to hold that there was a scuffle between the deceased and the first accused, and the deadly weapon was used during the scuffle. Looking at the nature of the injury caused on the accused party, it appears to us that the said injury could not be self-inflicted or suffered from a friendly hand, because, even though the medical evidence, viz., P.W.5 had opined that the said injury cast on the first accused was simple in nature, had it been little deeper, the same would have been very grave in nature, as it would have pierced through the lung, as opined by the medical evidence of P.W.5, and therefore, the first accused would not have had a mere apprehension, but he would have had a reasonable apprehension. Under those circumstances, we are convinced that the appellant acted on apprehension that a grievous hurt or death could have been caused to him. However it is obvious that the accused has clearly exceeded his limits. He did not stop inflicting the blows.

8.19. Injuries 1, 2, 4, 6, 7, 8 and 9, referred to in Ex.P3 above, as found on the deceased, speak by themselves as to the grave nature of the same, whereas, the injury found on the first accused was simple in nature. Since the force used by the first accused to combat the aggression is unduly excessive, it would be a wrong judicial approach to accept the defence put forth by the first accused in toto.

8.20. We are, therefore, of the considered opinion that even though the plea of private defence put forth by the first accused is probable and therefore acceptable, the first accused had exceeded such right, as the right of private defence could not be extended to inflict more harm than was necessary for the purpose of defence, as comparatively evident from Exs.P3 and P5, referred to above.

9. For the above reasons, while we are obliged to accept the plea of private defence, we are satisfied that the first accused had exceeded the right of private defence in causing more harm to the deceased than what was necessary, which resulted in the death of the deceased. Hence, the conviction and sentence of the appellant under Section 302 I.P.C. is set aside, but the appellant is convicted under Section 30 4 Part I, I.P.C. and sentenced for rigorous imprisonment for ten years, which, according to us, would meet the ends of justice.

The appeal is, therefore, allowed in part to the extent indicated above.

Index : Yes
Internet : Yes

sasi/ksv

To:
1. The Principal Sessions Judge,
Tuticorin.

2. State, rep. by Inspector of Police,

Eral Police Station.

3. The Public Prosecutor
High Court, Madras.